THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.15348 of 2007

Date: 27th September, 2007

Between :-

The Indian Airports Kamgar Union,
Regd.No.3950, Begumpet, Hyderabad Airport,
Rep. By its General Secretary,
G.A.Rudrappa .. Petitioner

And

The Chief Labour Commissioner (C),
Government of India,
Ministry of Labour Employment,
Shram Shakthi Bhavan,
Rafi Marg, New Delhi and 2 others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.15348 of 2007

ORDER:

1. This Court issued *rule nisi* on 19-7-2007.

2. Respondents 2 and 3 filed counter affidavit though it is shown as counter affidavit filed by respondents 3 and 4. A reply affidavit also had been filed. Though the matter is appearing under the caption "INTERLOCUTORY" at the request of the Counsel on

record, the Writ Petition is taken up for Final Hearing.

3. Sri P.Sreedhar Rao, the learned Counsel representing the writ petitioner had taken this Court through the averments made in the affidavit filed in support of the Writ Petition, the relevant portions of the Code of Discipline and the Circular and would maintain that in the facts and circumstances, there must be some independent supervision. The learned Counsel also pointed out that though the Circular and the Code of Discipline may not be statutory as such, the respondents are bound to honour the same and follow the same as guidelines. The Counsel also had pointed out to the complaint made on 23-9-1997, the letter dated 17-8-2007and also the Minutes of the meeting dated 29-5-1992, the letter dated 16-9-1992, the letter dated 10-10-2000 and also the note dated 24-7-2007 and would comment that in the light of the same, it is clear that the petitioner has been agitating for the rights which are being claimed in the present Writ Petition for sufficiently a long time and hence the stand taken in the counter affidavit cannot be taken either as a correct stand or as a justifiable stand and hence suitable directions are to be issued in this regard. The Counsel also placed reliance on certain decisions.

4. On the contrary, Sri E.Madan Mohan Reddy,

the learned Counsel representing respondents 2 and 3 would maintain that the Writ Petition itself is not maintainable since a Writ of this nature cannot be issued either for the enforcement of the Circular or the alleged Code of Discipline. Even otherwise, the learned Counsel would submit that the respondents 2 and 3 are acting in accordance with Law and the learned Counsel had taken this Court through the stand taken by these respondents in the counter affidavit and ultimately would conclude that in any view of the matter, the Writ Petition being a misconceived remedy, the same is liable to be dismissed.

5. Sri Gokula Rama Rao, the learned Counsel representing the 1st respondent also made certain submissions in the light of the counter affidavit filed by the other respondents.

6. Heard the Counsel on record.

7. The Indian Airports Kamgar Union, with Registered No.3950, Begumpet, Hyderabad Airport, represented by its General Secretary, filed the present Writ Petition to call for the records from the respondents by issuing a writ, order or direction more particularly one in the nature of writ of mandamus by directing the respondents to follow the Circular Instructions No.25/80 dated 18-12-1980 issued by the 1st respondent to

recognize the majority unions for collective bargaining in ensuing elections for the period from 2007-2012 and to pass such other suitable orders.

8. The affidavit filed in support of the Writ Petition was sworn to by the General Secretary of the petitioner-Union. It is stated that the process for conducting secret ballot to determine the majority/recognized status of the Unions is overdue as the 3rd respondent Union was declared to be the majority Union for the period 30-10-2002 to 29-10-2007 in the elections held in the month of September 2002 by notification dated 11-9-2002. The 3rd respondent-Union's period of recognition as the majority Union admittedly comes to an end by 29-10-2007. It is further stated that it is the established procedure adopted by the management that i.e., respondents 1 and 2 will commence the process of election in the month of June itself by calling all the Unions to hold Minutes of meeting to start process of election and on completion of such procedure, election notification will be issued. The petitioner-Union had made several representations dated 3-5-2007, 15-6-2007, 3-7-2007 and finally 14-7-2007 to commence the process for election which was done in the past years. But, the management without considering these representations and at the fag end of period of

recognition of 3rd respondent-Union is making hectic efforts to hold joint consultative meeting from 20th to 21st July Goa on certain demands without taking into confidence the other Unions existing under the Airport Authority of India. The action on the part of the Airport Authority of India to hold Joint Consultative Meeting with the 3rd respondent alone is only to favour them. The purpose of referendum with all the Unions to follow such procedure and to conduct secret ballot to determine the majority status of the Unions five months before is to verify the memberships of the Union members to complete the entire process of election since about 127 Airports and Airports establishment/employees are working all over India. It is further stated that calling for such Joint Consultative Meeting with only 3rd respondent Union is to favour the 3rd respondent in the ensuing elections. In all the representations submitted, the petitioner requested to adopt the same procedure of the previous years while taking any policy decisions with regard to the workmen benefits since the elections are to be scheduled in September 2007. In the representation of the petitioner Union also, the irregularities committed by the 3rd respondent had been specifically pointed out and in spite

of the representations of the petitioner, the 2nd respondent is going ahead with the Joint Consultative Meeting with to the 3rd respondent on 20th and 21st of July 2007 at Goa. It is also further stated that as per the Instructions No.25/80 dated 18-12-1980, the 1st respondent is the appropriate machinery to conduct the elections by secret ballot to identify the majority Union, but only in the year 2002 such procedural Instructions were deviated and the 3rd respondent was declared as the majority Union by the respondents and therefore it is just and necessary to direct the respondents to hold elections as per the procedure prescribed under the Instructions. Strong reliance was placed on No.CIC's Instruction No.25/80, New Delhi, dated 18-12-1980, issued by the Ministry of Labour, Office of the Chief Labour Commissioner, Shram Shakti Bhavan, Rafi Marg and also the relevant portion of the Code of Discipline, the procedure for verification of the membership of the Union for the purpose of recognition under the Code of Discipline.

9. The counter affidavit filed is sworn to by the Senior Manager (Law) in the Airport Authority of India who had denied several allegations. It is stated in para-3 of the counter affidavit that the averment of the process of

conducting secret ballot to determine the majority/recognized status of the Unions is overdue as the 3rd respondent Union was declared to be the majority Union for the period 30-10-2002 to 29-10-2007 in the elections held in the month of September 2002 by notification dated 11-9-2002, is misconceived. It is further stated that it is true that the period of recognition of the 3rd respondent Union will come to an end by 29-10-2007 but the averment that the elections are conducted in the month of September 2002 is misconceived. It is stated that the last Union elections were held during Octiber 2002 and the management has every right to hold elections to determine the majority status of a Union at any time even before the expiry of the term of recognition. It is also further stated that the averment that the established procedure adopted by the management that these respondents will commence the process of election in the month of June itself by calling all the Unions to hold Minutes of meeting to start process of election and on completion of such procedure election notification will be issued is incorrect. It is further stated that the 1st respondent has no role to play with regard to the Union elections to be held in the Airport Authority of India. It is not correct to say that the management is not following the

prescribed procedure for holding referendum. The Airports Authority of India (AAI) was formed by an Act of Parliament of 1994 and came into effect on 1-4-1995 with the merger of the erstwhile International Airports Authority of India (IAAI) and National Airports Authority (NAA). The management of unified AAI decides to elect a majority Union by holding referendum to safeguard the interests of the general workers all over India taking into account that multiplicity of the Union is not affordable. As such a Committee was constituted during 1997 and referendum to elect majority Union was held in a very free, fair and procedural manner. In this referendum, all the Registered Trade Unions operating in both the organizations i.e., IAAI and NAA also participated. The Union which got majority votes of the employees was declared single bargaining agent. The same procedure was also followed during the referendum held in October 2002. It is stated that it is a fact that on record proper procedure had been followed. As per the said procedure, policy and decisions adopted by the Airports Authority of India, this time also the election process had been initiated by issuing the office Order No.A.60011/21/2007-IR, dated 17-8-2007 to hold the elections to the Unions in Airports Authority of India by secret ballot to determine the majority/recognized status of the Unions and accordingly a Committee had been

constituted under the said office order and the Committee will hold the meetings with the Unions operating in AAI. It is further stated that the process to hold referendum had already been initiated and the Committee constituted for the purpose will also finalize the modalities to hold referendum, the terms and conditions of the recognition as well as facilities to be extended to the recognized Union in consultation with the Unions found eligible to participate in the referendum. The said Committee will also decide the procedure to be adopted to hold Union elections in Airports Authority of India to elect the majority Union and the single bargaining agent. The said Committee will hold meetings with the Registered Trade Unions having a valid registration and whose membership is open to all the cadres of employees in AAI as per the procedures adopted in this regard. It is also further stated that it is a matter of fact that the existing term of the recognized Union is expiring on 29-10-2007 and the management of AAI always reserves the right to hold meeting of the Joint Consultative Machinery. It is not correct that the petitioner Union had written several representations to the management to commence the process of election. The letter dated 3-5-2007 of the petitioner Union was a request for certain facilities and to consult the petitioner Union for

formulation of Pension Scheme for AAI employees. The letter dated 15-6-2007 of the petitioner Union was regarding collection of the Union subscription and donations from its own members for which AAI management has no role. The petitioner Union's letter dated 3-7-2007 is also a request to consult the petitioner Union before announcing the benefits or decisions and to pass orders to initiate the process of secret ballot since the Union elections are due. It is a matter of record that in all the letters mentioned in the petition, the petitioner Union had simply requested to consult them in all the policy related matters whereas the fact remains that the petitioner Union does not enjoy the majority status and is not a recognized Union. It is also further stated that the other allegations that the management without considering the representations and at the fag end of the period of recognition of the 3rd respondent Union is making hectic efforts to hold Joint Consultative Meeting from 20th to 21st July at Goa on certain demands without taking into confidence the other Unions existing under the Airports Authority of India, is misconceived. It is further stated that the meetings of the Joint Consultative Machinery are held as per the established schedule on yearly basis and are held with the recognized Union alone

and as such the question of taking into confidence the petitioner's Union does not arise. The allegation that the action on the part of the Airports Authority of India to hold Joint Consultative Committee meeting with the 3rd respondent alone is only to favour them, is incorrect. The Airports Authority of India had already initiated the process of recognition of the majority status by way of secret ballot and it will be completed as per the existing procedure and rules. It is also further stated at para-7 of the counter affidavit that the Joint Consultative Machinery meetings are held with the majority/recognized Union and non-recognised Unions are never called for any such meeting as the issues relating to the employees are discussed with the recognized Union for maintaining cordial relations. It is further stated that the JCM was held on 20th and 21st July at Goa and appropriate decisions had been taken in consultation with the recognized Unions. It is also further stated that it is not a fact that the management had not adopted appropriate machinery to conduct the election by way of secret ballot prior to 2002. It is a fact on record that the secret ballot election held during 1997 to elect the majority Union for a period of five years, proper procedure was adopted by the management. The procedure adopted during 1997 was further followed

during the secret ballot election held on 2002. It is also a fact on record that the petitioner Union had also participated in these two Union elections and lost. Accordingly it had been decided to follow the said procedure during the proposed referendum to be held in due course. It is also further stated that as per the Instructions No.25/80 dated 18-12-1980, the 1st respondent is the appropriate machinery to conduct the elections to identify the majority Union but only in the year 2002 such procedure Instructions were deviated and the 3rd respondent was declared as the majority Union by the respondent and therefore it is just and necessary to direct the respondents to hold elections as per the procedure prescribed under the Instructions, is incorrect. The Instructions No.25/80 dated 18-12-1980 does not apply to the Airports Authority of India. As per the Airports Authority of India Act 1994, Airports authority came into existence from 1-4-1995 and thereafter a policy decision had been taken to conduct the elections as per the procedure evolved by the AAI and accordingly the election process was conducted in the years 1997 and 2002. It is also further stated that the Circular Instructions No.25/80 dated 18-12-1980 is general instructions issued by the Chief Labour Commissioner (Central) to be

followed by the Departments in the event of management of Unions approach the Labour Ministry to conduct the elections but not otherwise. As far as the Airports Authority of India is concerned, in tune with the Instructions issued by CLC (Central) and as per the practice, the policy to hold elections had been framed and accordingly elections were held from time to time as per the modalities worked on their consent only. In the referendum which is due during October 2007, modalities, procedures and the date of election will be decided in consultation and at the instance of the participating Unions. In fact, the modalities adopted by the Airports Authority of India are not in conflict with any of the guidelines which are being followed by the Labour Ministry. It is also further stated that the Instructions and the procedures claimed by the petitioner have no statutory basis and the petitioner has no legal right to request to adopt a particular procedure to hold the elections for deciding the majority status of the Unions. As such, the Instructions No.25/80 dated 18-12-1980 does not apply in this case and the said Instructions or guidelines have no statutory basis to seek a Writ of Mandamus under Article 226 of the Constitution of India. The election process had already been initiated by the respondents by order dated 17-8-2007 and the Writ Petition is misconceived. The Writ

Petition is devoid of merits and is liable to be dismissed with costs including the miscellaneous applications.

10. In the reply affidavit filed, several averments were made by the writ petitioner again while answering the averments made in para-3 of the counter affidavit. It is stated in para-3 of the reply affidavit that the process for conducting secret ballot to determine the majority recognized status of the Union is overdue as the 3rd respondent Union was declared to be the majority Union for the period 30-10-2002 to 29-10-2007. The averment that elections held in the month of September 2002 by notification dated 11-9-2002 is specifically denied as misconceived and this can be evidenced in view of letter No.PRS/IR/1104/1/02/2143, dated 11-9-2002 and also the document dated 30-10-2002. It is further stated that it appears the averments were made by the deponent in the counter affidavit without proper verification of facts and further the averment that the management has every right to hold the elections to determine the majority status of the Union at any time even before the expiry of the term of the recognition does not stand to the scrutiny of Law. For the previous verification poll to recognize the majority Union, the process started in June 2002 itself and this can be evidenced through the documents filed by the petitioner

along with the Writ Petition. It is emphatically denied that the averments made in the counter affidavit that the 1st respondent has no role to play with regard to the verification poll of the majority status of the Union to be held in the Airport Authority of India. In fact, the erstwhile National Airports Authority of India had agreed to follow and observe the Code of Discipline as evolved in 16th Session of Indian Labour Conference held on May 1958 in letter and spirit. Therefore even merging the erstwhile Indian Airport Authority and the National Airport Authority of India and constituted Airport Authority of India by an Act of Parliament of 1994 which came into force w.e.f. 1-4-1995 has no bearing in so far as to hold the verification poll to recognize the majority status of a Union under the Code of Discipline. In so far as the referendum held in the year 1997 and 2002 to identify the majority Union by the management, the same will not give any right or authority to the respondents to deviate from the established procedure wherein it was agreed that both the managements and the Unions in public and private sectors to follow the Code of Discipline under which implementation machinery consists of two separate organizations i.e., implementation units and tripartite implementation committees and unbiased agencies had

been provided. In fact the petitioner Union had also made representations to the respondents 1 and 2 previously in the year 1997 and 2002 with regard to the violations committed by the 2nd respondent more particularly deviating the procedure of Code of Discipline and also the Circular Instructions No.25/80, dated 18-12-1980. It is also not out of place to submit that the Circular Instructions were issued as agreed upon under the Code of Discipline as ratified by all the Central employees and workers organizations at the 16th Session of the Indian Labour Conference held in May 1958 and which came into force w.e.f. 1-6-1958. Therefore the procedure adopted for recognizing majority Union during the year 1997 and 2002 has no relevance and no legs to stand. It is also further stated that the present office Order No.60011/21/2007-IR dated 17-8-2007 to hold the elections by the 2nd respondent is contrary to the Code of Discipline, Circular Instructions issued by the 1st respondent and also the principles of Law laid down by the Apex Court. It is also further stated that in view of the Law laid down by the High Courts the procedure adopted by the 2nd respondent is unjustified, illegal and untenable in Law. With regard to the other averments made in the counter affidavit, the same are hereby denied as incorrect

and the representations and additional material papers filed along with the reply itself disclose the favouratism of the 2nd respondent by deviating from the procedure to conduct the verification poll under the Code of Discipline to extend undue advantage to the 3rd respondent Union. In reply to the averments made in paras 7 and 8 of the counter affidavit, it is stated that the petitioner Union had brought it to notice of the 1st respondent with regard to the violations committed while recognizing majority Union during the year 1997 and 2002 and the 2nd respondent being the model employer cannot deviate from the procedure established by Law and the illegalities committed cannot be perpetuated. It is further stated with regard to the averments made in para-9 of the counter affidavit that it is evidenced that the 2nd respondent had violated the Code of Discipline and also the Circular Instructions No.25/80 dated 18-12-1980 and the contents that the Circular Instructions have no application to the 2nd respondent is devoid of any merit. As per the averment made in the counter affidavit, the Airport Authority of India was formed by an Act of Parliament of 1994 in merger of erstwhile National Airport Authority of India and the International Airport Authority of India, in case the

appropriate Government is Central Government and therefore the 2nd respondent had taken a policy decision to conduct elections as per the procedure evolved by the Airport Authority of India is devoid of any merit. The Airport Authority of India has no authority to take any such alleged policy decisions by itself inasmuch as it is not an administrative function or right created in favour of Airport Authority of India under any statutory provisions. Even assuming without admitting, if any such policy decision is taken as alleged unilaterally by the 2nd respondent without taking into consideration the Code of Discipline as ratified by all the Central employees and workers organization at the 16th Session of the Indian Labour Conference held in 1958, the same is liable to be ignored. Therefore at no stretch of imagination it can be drawn that the 2nd respondent can conduct the verification poll to determine the majority Union, but is only as per the Code of Discipline and Circular Instructions No.25/80 issued in this regard and also as per the Law laid down by the various Courts and the Apex Court.

11. It is true that in No.CIC's Instruction No.25/80 dated 18-12-1980, issued by the Ministry of Labour, Office of the Chief Labour Commissioner (C), Shram Shakti Bhavan, Rafi Marg, the subject "*Determination of*

relative strength of union operating in an establishment/industry in a local area under the Central Sphere by Secret Ballot" had been dealt with and it appears the same had been issued as certain trade union organizations had been representing to the Government for determination of relative strength of unions operating in an establishment by Secret Ballot System and hence a copy of the procedure as evolved and approved by the Ministry of Labour had been enclosed for information. Further, the procedure for verification of membership of Unions for the purpose of recognition under the Code of Discipline and the rights of the recognized Unions under the Code of Discipline also had been referred to in elaboration by the Counsel representing the writ petitioner. Further, as already referred to supra, along with the reply affidavit, the undernoted documents also had been relied upon :

(1) Letter No.A60011/21/2007-IR, dated 17-9-2007
(2) Complaint No.AAKU/Complaint/97, dated 23-9-1997
(3) Minutes of Meeting held on 29-5-1992 between the management of NAAI and their workers, dated 29-5-1992
(4) Letter No.A60011/14/92-RP dated 16-11-1992
(5) Letter No.A60011/1/200-RP SPP dated 19-10-2000, and
(6) Note, dated 24-7-2007.

12. As can be seen from the respective stands taken by the writ petitioner and the respondents 2 and 3 and also the nature of relief prayed for by the writ petitioner, this is a Writ Petition filed seeking issuance of a writ of mandamus praying for directing the respondents to follow Circular Instruction No.25/80 dated 18-12-1980 issued by the 1st respondent to recognize majority Unions for collective bargaining in ensuing elections for the period from 2007 to 2012. Incidentally, the proceedings referred to supra and the Code of Discipline also had been relied upon. The learned Counsel representing the writ petitioner placed strong reliance on **General Secretary, Rourkela Sramik Sangh Vs. Rourkela Mazdoor Sabha and others** [1] wherein the Supreme Court had dealt with the question *what is the meaning of "Implementation Machinery" within the meaning of Code of Discipline* and observed at paras 4, 5 and 6 as hereunder :

> "The relevant provisions of the Code are as follows :
>
> Section II of the Code deals with "Implementation Machinery" and is headed as such. It begins as follows:
>
> "2. implement the Code of Discipline, labour enactments, awards and agreements, a separate machinery has been set up at the

Centre and in all States. This machinery comprises:

(a) implementation units in Labour Departments, and

(b) tripartite implementation committees at the Central, State and local levels".

Therefore it proceeds to deal with Implementation Units and states as follows:

(i) *Implementation Machinery* :

3. A Central Implementation and Evaluation Division has been set up in the Ministry of Labour and Employment under the charge of a Joint Secretary. In the States also, Implementation Units have been set up under the charge of either a whole time officer of the Labour Department or of the State Labour Commissioners. According to the recommendations of the Labour Ministers' Conference held in January 1960 the Implementation Officer in each State should, as far as possible, be wholetime and of sufficient seniority. The following functions have been assigned to Implementation Units:

(1) to ensure implementation of the Code of Discipline, Code of Conduct, labour enactments, awards, agreements etc., with a view to reducing at the source the main cause of industrial strife;

(2) to supplement the work of the Industrial Relations Machinery in taking preventive action where disputes are brewing and in settling long pending disputes which could not be settled otherwise;

(3) to maintain liason with Central, State or local units, as the case may be, to ensure effective working of the Implementation Machinery;

(4) to arrange meetings of Implementation Committees and to function as their Secretariat;

(5) to bring about out-of-court settlement of cases pending in High Courts and the Supreme Court;

(6) to ensure that cases are screened by the Screening Committees set up by the Central Employers' and Workers Organisations before appeals are filed in higher courts;

(7) to evaluate (a) major strikes, lock-outs and disputes in order to fix responsibility for them, and (b) the working of important labour legislations, awards, policies, decisions etc., in order to see how far they have produced the results which they were intended to produce and suggest measures to improve them;

(8) to collect and maintain necessary statistics regarding implementation of the Code of Discipline, labour enactments, awards etc.

It then deals with Implementation Committees and states as follows:

"(iii) *Implementation Committees:*

6. The Implementation Committees at the Centre and in the States represent both Central Employers' and Workers' Organisations. The Central Implementation and Evaluation Committee consists of an equal number of employers' and workers' representatives – four each from the Central

employers' and workers organizations. They are nominated by the organizations to which they belong and not by government. State/Administration Implementation Committees are also required by the constituted in consultation with the Central Employers' and Workers' Organisations wherever they have affiliates in States/territories concerned. These Committees are presided over as far as possible by respective Labour Ministers. At the local level, the Committees comprise and equal number of representatives of employers and workers in the area and are presided over by an officer of the Labour Department or by a prominent person in the region.

7. The functions assigned to Implementation Committees by the Standing Labour Committee in October 1957 and other Committees are as follows:

(1) To examine the extent of implementation of agreements, awards and settlements and to advise the parties which are anxious to implement an award but are unable to do so, as to how the difficulties in implementation could be overcome.

(2) To fix responsibility for violations of the Code in cases brought to its notice by the Implementation Unit or in those enquired into by it or a sub-committee appointed by it. In doing so, the Committee may hear the parties concerned, if considered necessary.

(3) To consider cases for out-of-court settlement with the consent of the parties, screening of cases and industrial disputes before appeals are filed etc., that may be

brought to its notice by the Implementation Unit or such other cases that the Committee may desire, to bring about harmonious labour-management relations.

(4) To review periodically the working of the Code in their respective spheres.

(5) To maintain a two-way exchange of experience between the Committees at the lowest level and the Central Committee. All points of importance arising at any level should be given wide circulation".

The Code further assigns the Implementation Units among others the duty to period the secretariat for the Implementation Committees and to ensure that their decisions are implemented promptly. We have also seen from the enumeration of the functions of the Implementation Units above, that the Units have to arrange meetings of the Implementation Committees and to function as their secretariat.

5. Section IV of the Code periods for "Grievance Procedure". It states, among other things, that it is the responsibility of the Central and State Administration Implementation Units to ensure that a grievance procedure is set up be every management in consultation with their workers.

6. Section V of the Code deals with Recognition of Unions and states as follows:

"11. Except in those States where the procedure to confer recognition on unions is governed by a statute the conditions and procedure for recognitions of unions are governed by the provisions of the Code of

Discipline. It is the responsibility of Implementation Units to ensure that recognition is granted to unions by managements wherever they satisfy the prescribed criteria. The procedure to be followed for this purpose is at Appendix IV. For the sake of uniformity the State Implementation Units are requested to adopt it."

Appendix IV which is referred to above is headed as follows :

"Procedure for verification of Membership of Unions for the purpose of Recognition under the Code of Discipline."

It is not necessary to set out the entire procedure stated in the said Appendix. A reference to only first two clauses and clause (10) of the said procedure would suffice for our purpose. They state as follows:

"(1) On receipt of a representation from a Union for recognition under the Code of Discipline, the Central/State Implementation Machinery will first ascertain :

(a) the names of unions functioning in the establishment together with their number and date of registration by reference to the Registrar of Trade Unions concerned;

(b) whether any of the unions functioning in the establishment was responsible for an established breach of Code during the past one year. (By an 'established breach of Code' is meant a breach reported to and on enquiry established by the Implementation Machinery of the State or the Centre);

(c) whether the existing recognized union, if any, has completed a period of two years of recognition.

(2) After ascertaining the above facts, the Implementation Machinery at the Centre will request the Chief Labour Commissioner to arrange verification of membership of unions entitled to recognition under the Code. If the States, either the Implementation Officer will carry out this verification or get it done through the State Labour Commissioner, depending on the practice in each State.

……..

(10) The verification officer will report his findings to the Central/State Implementation Machinery which in turn will communicate the decision to the management as well as to the unions. In his report the verification officer will also indicate the total number of workers in the establishment and the percentage of the verified membership to it."

Elaborate submissions were made by the learned Counsel representing the writ petitioner that in the light of this decision that the Code of Discipline being binding to be taken as enforceable and suitable directions can be issued to the respondents to follow the same. The learned Counsel for the writ petitioner also relied upon a decision of the Apex Court in **Food Corporation of India Staff Union Vs. Food Corporation of India and others**

[2] wherein the Apex Court at paras 4 and 5 observed :

"We have perused the aforesaid documents. We direct that the following norms and procedure shall be followed for assessing the representative character of trade unions by the "secret ballot system".

(i) As agreed to by the parties the relative strength of all the eligible unions by way of secret ballot be determined under the overall supervision of the Chief Labour Commissioner (CLC).

(ii) The CLC will notify the Returning Officer who shall conduct the election with the assistance of the FCI. The Returning Officer shall be an officer of the Government of India, Ministry of Labour.

(iii) The CLC shall fix the month of election while the actual date/dates of election shall be fixed by the Returning Officer.

(iv) The Returning Officer shall require the FCI to furnish sufficient number of copies of the lists of all the employees/workers (categories III and IV) governed by the FCI (Staff) Regulations, 1971 borne on the rolls of the FCI as on the date indicated by the CLC. The list shall be prepared in the pro forma prescribed by the CLC. The said list shall constitute the voters list.

(v) The FCI shall display the voters list on the notice boards and other conspicuous places and shall also supply copies thereof to each of the unions for raising objections, if any. The unions will file the objections to the

Returning Officer within the stipulated period and the decision of the Returning Officer shall be final.

(vi) The FCI shall make necessary arrangement to: (a) give wide publicity to the date/dates of election by informing the unions and by affixing notices on the notice board and also at other conspicuous places for the information of all the workers; (b) print requisite number of ballot papers in the pro forma prescribed by the CLC incorporating therein the names of all the participating unions in an alphabetical order after ascertaining different symbols of respective unions; (c) the ballot papers would be prepared in the pro forma prescribed by the CLC in Hindi/English and the concerned regional language; (d) set up requisite number of polling stations and booths near the premises where the workers normally work; and (e) period ballot boxes with requisite stationery, boards, sealing wax etc.

(vii) The Returning Officer shall nominate Presiding Officer for each of the polling station/booth with requisite number of polling assistants to conduct the election in an impartial manner. The Presiding Officers and the polling assistants may be selected by the Returning Officer from amongst the officers of the FCI.

(viii) The election schedule indicating the dates for filing of nominations, scrutiny of nominations papers, withdrawal of nominations, polling, counting of votes and the declaration of

results, shall be prepared and notified by the Returning Officer in consultation with the FCI. The election schedule shall be notified by the Returning Officer well in advance and at least one month's time shall be allowed to the contesting unions for canvassing before the date of filing the nominations.

(ix) To be eligible for participating in the election, the unions must have valid registration under the Trade Unions Act, 1926 for one year with an existing valid registration on the first day of filing of nomination.

(x) The Presiding Officer shall allow only one representative to be present at each polling station/booth as observer.

(xi) At the time of polling, the polling assistant will first score out the name of the employee/workman who comes for voting, from the master copy of the voters' list and advise him thereafter to procure the secret ballot paper from the Presiding Officer.

(xii) The Presiding Officer will hand over the ballot paper to the workman/employee concerned after affixing his signatures thereon. The signatures of the workman/employee casting the vote shall also be obtained on the counterfoil of the ballot paper. He will ensure that the ballot paper is put inside the box in his presence after the voter is allowed to mark on the symbol of the candidate with the inked rubber stamp in camera. No employee/workman shall be allowed to cast his vote unless he produces his valid identity

card before the Presiding Officer concerned. In the event of non-production of identity card due to any reason, the voter may bring in an authorization letter from his controlling officer certifying that the voter is the bona fide employee of the F.C.I.

(xiii) After the close of the polling, the Presiding Officer shall furnish detailed ballot paper account in the pro forma prescribed by the CLC indicating total ballot papers received, ballot papers used, unused ballot papers available etc., to the Returning Officer.

(xiv) After the close of the polling, the ballot boxes will be opened and counted by the Returning Officer or his representative in the presence of the representative of each of the unions. All votes which are marked more than once, spoiled, cancelled or damaged etc., will not be taken into account as valid votes but a separate account will be kept thereof.

(xv) The contesting unions through their representatives present at the counting place may be allowed to file applications for recounting of votes to the Returning Officer. The request would be considered by the Returning Officer and in a given case if he is satisfied that there is reason to do so he may permit recounting. However, no application for recounting shall be entertained after the results of the votes are declared.

(xvi) The result of voting shall be compiled on the basis of valid votes polled in favour of each union in the pro forma prescribed by the CLC

and signatures obtained thereon from the representatives of all the unions concerned as a proof of counting having been done in their presence.

(xvii) After declaring the results on the basis of the votes polled in favour of each union by the Returning Officer, he will send a report of his findings to the CLC.

(xviii) The union/unions obtaining the highest number of votes in the process of election shall be given recognition by the F.C.I. for a period of five years from the date of the conferment of the recognition.

(xix) It would be open to the contesting unions to object to the result of the election or any illegality or material irregularity which might have been committed during the election. Before the Returning Officer such objection can only be raised after the election is over. The objection shall be heard by the CLC and dispose of within 30 days of the filing of the same. The decision of the CLC shall be final subject to challenge before a competent court, if permitted under law."

13. It is not in serious controversy between the parties that the Circular issued specified above and also the Code of Discipline on which strong reliance had been placed, cannot be said to be having any statutory flavour. It is no doubt true that when such Circulars or guidelines

are issued, if those are applicable, all the concerned inclusive of the respondents are bound to follow the same. But however, in the light of the specific stand taken by the respondents 2 and 3 in the counter affidavit, this is a matter which may have to be carefully examined. It is pertinent to note that normally a writ of mandamus of this nature cannot be issued to enforce such non-statutory guidelines if any though for other purposes, the concerned, inclusive of the respondents, are bound to follow such Instructions, if otherwise they are applicable to a particular given case. In the light of the respective stands taken by the parties and also the prior letters and the correspondence, the Circular and the Code of Discipline placed before this Court, this Court is of the considered opinion that positive directions as prayed for by way of a writ of mandamus cannot be granted by this Court. However, in the light of the interest of the Trade Union movement as such and also the relevant Trade Unions and the guidelines or instructions to be followed, the writ petitioner is given liberty to make appropriate

representation in detail to the 1st respondent in the light of the peculiar facts and circumstances within a period of two weeks from today and the 1st respondent to consider the same in the light of the Circular and also the Code of Discipline and the prior letters and dispose of such representation in accordance with Law within a period of eight weeks thereafter. This Court is of the considered opinion that except giving such direction, no positive directions as such for enforcement of such Circular or otherwise can be granted by issuing a writ of mandamus.

14. Accordingly with the above direction, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

Date : -9-2007

L.R. copy to be marked : YES / NO

AM

[1] **1991 SCC (L&S) 1036**

[2] **AIR 1995 S.C. 1344**